IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 713 of 1997

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SHABBIRBHAI IQBALBHAI
Versus
STATE OF GUJARAT

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Appearance :
MR DIVYESH JOSHI for MR JB PARDIWALA for Appellant.
MS HANSA PUNANI, APP for Opponent.

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 13/12/2007

ORAL JUDGMENT

1. Appeal arises out of judgment and order dated 11-7-1997 passed by learned Additional Sessions Judge, Valsad in Special Case No.2 of 1993. The appellant was the original accused. He was charged with offence punishable under Section 354 of the Indian Penal Code as well as under Section 3 (1) (11) of Scheduled Caste and Scheduled Tribes

(Prevention of Atrocities) Act.

2. In the nutshell, prosecution case was that on 26-12-1990, when young girl, Kailashben, daughter of the complainant aged about 8 years came to the accused for collecting washed clothes, he called her inside the room, locked the door and put his hand inside the panty of the girl, at which point, the girl started crying and the accused let her go. He had thereby outraged the modesty of a woman and committed offence punishable under Section 354 of the Indian Penal Code. Since the girl belonged to Scheduled Tribe, Section 3 (1) (11) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act was also added.

3. To prove the charge, prosecution examined complainant as P.W.1. She narrated the incident as told to her by her daughter. The victim girl herself was examined as P.W.2. She also narrated the incident that had taken place.

4. Learned Additional Sessions Judge convicted the appellant under Section 354 of the Indian Penal Code and sentenced him to R.I. for six months and fine of Rs.5,000/-. He was, however, acquitted for offence punishable under Section 3 (1) (11) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act.

5. Having heard learned advocate, Shri Divyesh Joshi for Shri Pardiwala for the appellant and learned APP, Ms.Punani for the State, I do not find any reason to interfere with the conclusion of the learned Judge regarding the guilt of the appellant. There was sufficient evidence on record to prove the charge. The victim girl had clearly stated the incident that had happened. Nothing has come out in her cross-examination. There was no reason why a young girl should have

accused the appellant of indecent behaviour. There was no previous enmity or other oblique reason for the complainant to involve the appellant. Considering all these aspects of the matter, I find that learned Judge was perfectly justified in convicting the appellant.

6. Question of sentence, however, requires to be considered. The incident took place in the year 1990. 17 years have passed since then. Appellant himself was aged about 20 years at that time. He has now settled down, married and has family to support. Though the act committed by the appellant was indecent and totally unacceptable in any civilized society, significantly, he had not caused any harm or injury to the girl. Considering all these aspects of the matter, it would be appropriate to direct the appellant to pay higher fine, out of which the victim can be compensated. This, in my view, would serve the ends of justice better instead of sentencing the appellant to imprisonment.

7. Under the circumstances, sentence of six months of imprisonment is set aside. Fine is increased to Rs.25,000/- (including Rs.5,000/- imposed by the trial Court and already paid up by the appellant). Such fine i.e. additional amount of Rs.20,000/- shall be deposited before the trial Court within a period of four weeks from today. In case of default in payment of fine, the appellant shall undergo simple imprisonment for a period of six months. Upon payment of fine, as directed above, the same shall be paid over to the victim.

8. With these directions, appeal is disposed of.

(Akil Kureshi, J.)

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